

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Robert Harsh, et al., :
Plaintiffs : Case No. 2:08-cv-280
v. : Judge Frost
Warden Robin Knab, et al., : Magistrate Judge Abel
Defendants :
:

REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiffs' joint motions for Default Judgment and Summary Judgment. (Doc. 9.) For the reasons below, it is **RECOMMENDED** that Plaintiffs' motions be **DENIED**.

Plaintiffs brought this action in March 2008 in the United States District Court, Western Division. The case was transferred to the Eastern Division in Columbus, Ohio. (See Doc. 2.) On July 3, 2008, Plaintiffs moved the Court for default judgment and summary judgment. There is no evidence of service of process on the docket.

The motion for default judgment should be denied because Plaintiffs failed to tender the United States Marshall forms for service and there is no evidence of service on the Court's docket. Also, prior to obtaining a default judgment there must be an application for an entry of default. There is no such application on the Court's docket. Likewise, Plaintiffs' motion for summary judgment should also be

denied because it is premature.

Accordingly, it is **RECOMMENDED** that Plaintiffs' motions for default judgment and summary judgment (**doc. 9**) be **DENIED**.

If any party objects to this Report and Recommendation, that party may, within ten (10) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. *See* 28 U.S.C. §636(b)(1); Fed. R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *See Thomas v. Arn*, 474 U.S. 140, 150-152 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *See also Small v. Secretary of Health and Human Services*, 892 F.2d 15, 16 (2d Cir. 1989).

s/Mark R. Abel
United States Magistrate Judge